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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,503	12/17/2001	Jeffrey K. Reinemann	10559-540001/P12560	4314

20985   7590   05/25/2006

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EXAMINER
FISCHETTI, JOSEPH A

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/024,503	REINEMANN, JEFFREY K.
	Examiner	Art Unit	
	Joseph A. Fischetti	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 March 2006*.
2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9 and 27-36* is/are pending in the application.
  4a) Of the above claim(s) *27-36* is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-9* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  a)☐ All b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of claims 1-9 in the reply filed on 4/14/05 is acknowledged. The traversal is on the ground(s) that the method has now been restricted to practice by technological means. This is not found persuasive because the system of claims of Group II can be used to practice another method such as a corporate security device which monitors the use by employees of the network. Also, claim 19 still has separate utility, such as a medium on which music can be stored and played. All the intended use recitations in the world cannot strip this attribute from this article of manufacture.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's response dated 3/22/06 re-presents article claims 27-36. These newly presented claims are drawn to a different statutory class of invention e.g. not a method. Applicant in his response dated 11/30/05 positively elected, albeit with traverse, to prosecute the method claim of this case, but now seeks, after the first action on the merits to have examined additional claims drawn to the apparatus. This election was made FINAL and no petition was filed.

Since applicant has received an action on the merits for the originally presented invention, on 12/22/05, this invention has been both constructively and affirmatively elected by original presentation and election for prosecution on the merits. Accordingly, claims 27-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 applicant recites that a local resource is released to the remote processor if "an amount of resources consumed by the remote processor are below the determined limit". The examiner reads this to mean that the remote processor is not at full capacity and it is only then that a local resource is release to it. It would seem the opposite to be true. That when the remote processor is at capacity, then it is helped by the local resource released to it by the host.

Second, applicant has failed to claim the invention as disclosed. Applicant's response states "the upper limit for resource consumption for the remote processor relates, inter alia, to a sharing policy that specifies a maximum amount of resources that can be consumed from a resource pool". However, this is not what is being recited in the claim. The language of the claim is clear, it is the remote processor and only it for which the upper limit is determined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Blumenau in view of Pian et al.

Blumenau et al. disclose a method of managing resources among networked

processors 22,23,21,20 that include a host processor 22,23 and a remote processor 21.

Blumenau et al. disclose a host activity monitoring facility 62 which reads on collecting

accounting information at each of the networked processors to monitor utilization of the

resources; releasing a local resource (local resource is read as the switch flow through

the host ports) controlled by the host processor to the remote processor (remote

processor is read as the switch control 55 which controls the switch functions of the

hosts 22'-25'), col. 7 lines 61,62 disclose monitoring frequencies of the host to balance

usage, the frequencies being a fixed range is read as a predetermined upper threshold

and thus reads on "the utilization of the local resource maintained within a pre-

determined upper threshold configured by an authorized user"; and col. 7 line 59

discloses a dynamic balancing facility which computes a new list of host controls on the

switches based upon, inter alia, frequency threshold, which reduces the availability of

the local resource to the remote processor by the host processor. However, Blumenau

does not appear to use an accounting manager which monitors the resources at the

networked processor and releases resources based on collected accounting data nor do they disclose determining an upper limit of resource consumption for a remote processor. Pian et al. disclose a centralized accounting manager 122 which collects queue times from localized resources to collect accounting information (col. 8 lines 52 et seq.) at a networked processors 114 and further discloses determining an upper threshold for the local resource 146 e.g., an "upper limit is placed on the local ready task entry queue 146" and has a determined upper limit of resource consumption for the remote processor, see col. 9 lines 30-45 overflow occurs when nodes 124 have more tasks than they can hold. Further, Phan teaches releasing ready task entries to remote processors 112 when the processors 112 are not in a more than they can hold mode. It would be obvious to modify the method of Blumenau to include a centralized manager such as device 122 in Pian et al. and to determine an upper limit consumption for a remote processor in Blumenau et al. as a function of releasing the local resource as taught by Phan, the motivation being the increased ability to forecast downstream availability of a resource.

Re claims 2,8: see, Blumenau col. 7 lines 63 et seq. a specified priority level is assigned to each of the hosts thereby answering the limitation of negotiating because prioritization inherently requires negotiations; the loop ports of the hosts 24,25 are read as an amount of the local resource and the switch 40 is read as an amount of a remote resource; and since the activity e.g. releasing into service of the switch is proportional to that of the loop ports, there is read an exchange therebetween.

Re claim 3, 5: Since the utilization of one host loop port in Blumenau will be exclusive of another's, this occurrence is read as substantially different in time.

Re claim 4, 6: the another resource is read as the balancing facility 63 of the computer in Blumenau which is read as the centralized location.

Re claim 9: the user defined condition is read as the access of hosts to storage in Blumenau.

Re claim 7:col. lines 13 et seq. discuss trying a port to determine if it is busy and if so then rerouting data until the first port is freed which is read as form of credit which is redeemed once the port frees up in Blumenau.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

FINAL REPLY:

Applicant 's amendments fail to overcome the outstanding rejections for the following reasons:

The recitations of the claims are not exclusive to the invention but include how the proposed combination behaves.   Pian et al. disclose a centralized accounting manager 122 which collects queue times from localized resources to collect accounting information (col. 8 lines 52 et seq.) at a networked processors 114 and further discloses determining an upper threshold for the local resource 146 e.g., an "upper limit is placed on the local ready task entry queue 146" and has a determined upper limit of resource consumption for the remote processor, see col. 9 lines 30-45 overflow occurs when

nodes 124 have more tasks than they can hold. Further, Phan teaches releasing ready

task entries to remote processors 112 when the processors 112 are not in a more than

they can hold mode. In Pian et al. when ready task queue 146 is at its predetermined

upper threshold, col. 8line 56, it is no longer available to process and releases ready

task entries to remote processors 112 when the processors 112 are not in a more than

they can hold mode.

The examiner has taken his interpretation from the claims as they are written.

Applicant's remarks in the last response indicate otherwise, in that applicant states "the

upper limit for resource consumption for the remote processor relates, inter alia, to a

sharing policy that specifies a maximum amount of resources that can be consumed

from a resource pool". However, this is not what is being recited in the claim. The

language of the claim is clear, it is the remote processor and only it for which the upper

limit is determined. If this is what the invention is, then applicant must recite it as such,

namely, that the upper limit for resource consumption is defined by a resource pool

which includes the consumption attributed to the remote processor but not exclusively

defined by it, as the claims are now drawn.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant

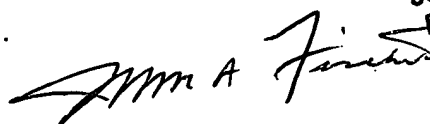is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Joseph

Fischetti at telephone number (703) 305-0731.

Joseph A. Fischetti
Primary Examiner
Art Unit 3627